

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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5 SUSAN CHAMBERLAN, BRIAN CHAMPINE,  
and HENRY FOK, on behalf of  
themselves and all others similarly  
situated, and on behalf of the  
general public,

No. C 03-02628 CW

ORDER DENYING  
DEFENDANT'S  
MOTION TO  
DECERTIFY CLASS  
AND GRANTING  
PLAINTIFFS'  
MOTION TO  
IMPLEMENT CLASS  
NOTICE PLAN

6 Plaintiffs,

7 v.

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9 FORD MOTOR COMPANY, and DOES 1  
through 100, inclusive,

10 Defendants.

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13 Defendant Ford Motor Company (Defendant) moves to decertify  
the class represented by Plaintiffs Susan Chamberlan and Henry  
Fok, on behalf of themselves and others similarly situated  
(collectively, Plaintiffs). Defendant also moves to stay  
implementation of the class notice plan and certain trial  
proceedings pending the Court's rulings on Defendant's other  
motions. Plaintiffs oppose these motions, and move for  
immediate implementation of the class notice plan. Defendant  
opposes Plaintiffs' motion. The matters were heard on March 18,  
2004. Having considered the papers filed by the parties and  
oral argument on the motions, the Court DENIES Defendant's  
motion to decertify the class (Docket No. 270); DENIES  
Defendant's motion to stay the proceedings (Docket No. 287); and  
GRANTS Plaintiffs' motion for immediate implementation of the  
class notice plan (Docket No. 318). The Court takes under  
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1 submission Defendant's motions for summary judgment and for  
2 judgment on the pleadings.

3 I. Class Certification

4 Any order certifying a class action "may be altered or  
5 amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C).  
6 The standard for class certification was set forth in the  
7 Court's September 8, 2004 Order Granting Plaintiffs' Motion for  
8 Class Certification. Defendant filed a Rule 23(f) petition in  
9 the Ninth Circuit Court of Appeals seeking review of that  
10 decision. Defendant's petition was denied on March 9, 2005.

11 Defendant argues that there can be no class-wide proof that  
12 Plaintiffs were harmed "as a result of" Defendant's alleged  
13 omissions. The Court considered this argument in its prior  
14 determination to certify the class. Defendant has not shown  
15 that new evidence revealed during discovery warrants  
16 reconsideration of this argument.

17 Defendant claims that Plaintiffs' experts have conceded  
18 that Defendant possessed no material information until after  
19 some class members purchased their cars, and that Defendant's  
20 evolving knowledge about the intake manifolds mandates  
21 decertification. Defendant mischaracterizes the testimony of  
22 Plaintiffs' experts. For instance, Thomas Feaheny testified  
23 only that it was not until 2001 that Defendant "recognized and  
24 committed to . . . taking corrective action," and that some of  
25 the "detailed specifications" for the composite material used  
26 "probably" changed over time. See Swaney Decl., Ex. T, Feaheny  
27 Dep. 164:11-25 and 138:14-19. The cited testimony does not

1 address when Defendant should have disclosed information about  
2 Plaintiffs' manifolds, and does not support Defendant's  
3 position. Evidence that Defendant's knowledge changed over time  
4 does not alter the Court's determination that class  
5 certification is appropriate. Indeed, it is in the interests of  
6 judicial efficiency to have a single jury determine the core  
7 salient facts as to whether, and if so when, Defendant failed to  
8 disclose material information.

9 Defendant contends that the claims of the named Plaintiffs  
10 are not sufficiently typical of the class, primarily because  
11 their manifolds have failed while other class members' manifolds  
12 have not. The Court is not persuaded by Plaintiffs' position  
13 that class members whose manifolds have not yet failed may  
14 nonetheless recover the cost to replace their manifolds as  
15 compensatory damages under the CLRA. However, the fact that all  
16 class members may not recover the same measure of compensatory  
17 damages does not warrant decertification of the class. Cf.  
18 Wilens v. TD Waterhouse Group, Inc., 120 Cal. App. 4th 746  
19 (2003) (denying class certification in CRLA action where court  
20 could not presume that each class member suffered "any damage"  
21 as needed for standing).

22 More generally, Defendant argues that the Court should  
23 decertify the class because the jury cannot make a single "yes  
24 or no" determination as to liability, yet Plaintiffs will be  
25 able to present the jury with an unfairly amalgamated "perfect  
26 plaintiff." Defendant urges the Court to follow the Fourth  
27 Circuit's reasoning in Broussard v. Meineke Discount Muffler

1     Shops, Inc., 155 F.3d 331 (4th Cir. 1998), reversing a class  
2 certification ruling after trial due to "pointed 'adversity  
3 among subgroups,'" and lack of commonality and typicality, and  
4 finding that the class action setting "so infected the  
5 proceedings" that the named plaintiffs' claims could not be  
6 evaluated alone. Id. at 340, 344. Defendant has not identified  
7 factors that might make Broussard persuasive authority here;  
8 this case does not involve multiple potential grounds (in both  
9 tort and contract) for liability, multiple defendants,  
10 complicated and varied communications (including oral  
11 representations) between members of the plaintiff class and  
12 defendants, or pointed conflicts of interest.

13       For these reasons, the Court denies Defendant's motion to  
14 decertify the class. Defendant's arguments will be further  
15 addressed in the context of the Court's rulings on the motion  
16 for summary judgment and any pre-trial motions.

17 II. Defendant's Motion for Stay and Plaintiffs' Motion to  
18 Implement Class Notice Plan

19       Defendant's initial motion for an overall stay in the  
20 proceedings is moot in light of the Ninth Circuit's ruling.  
21 Plaintiffs counter-move for immediate implementation of the  
22 class notice plan. Defendant's remaining objection to this  
23 counter-motion is also moot now, due to the Court's denial of  
24 Defendant's motion to decertify the class. Therefore, the Court  
25 grants Plaintiff's motion to implement the class notice action  
plan immediately.

26       Defendant's request to postpone the April 6 deadline for  
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**United States District Court**

For the Northern District of California

1 exchange of pretrial materials is likewise denied. All pre-  
2 trial deadlines will remain in effect. Unless and until the  
3 Court orders otherwise, the parties do not need to prepare or  
4 exchange findings of fact and conclusions of law regarding  
5 Plaintiffs' claim on behalf of the general public under  
6 California's Unfair Competition Law, Business & Professions Code  
7 § 17200 et seq. The Court is currently not inclined to continue  
8 the trial date.

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10 IT IS SO ORDERED.

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3/21/05

/s/ CLAUDIA WILKEN

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Dated: \_\_\_\_\_

CLAUDIA WILKEN  
United States District Judge

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